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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

REY MARILAO, for himself and All  
Others Similarly Situated,  
  
Plaintiff,  
  
vs.  
  
MCDONALD’S CORPORATION, a  
Delaware corporation doing business in  
California,  
  
Defendant.

**CASE NO. 09-CV-01014-H (AJB)  
ORDER GRANTING IN PART  
AND DENYING IN PART  
MOTION TO DISMISS FIRST  
AMENDED COMPLAINT**

On July 7, 2009, Plaintiff Rey Marilao filed a first amended class action complaint against Defendant McDonald’s Corporation (“McDonald’s”) alleging causes of action for a violation of California Business and Professions Code §17200 and unjust enrichment. (Doc. No. 15.) On July 24, 2009, McDonald’s filed a motion to dismiss the first amended complaint for failure to state a claim. (Doc. No. 16.) Plaintiff filed a response in opposition on September 3, 2009. (Doc. No. 17.) McDonald’s filed a reply on September 14, 2009. (Doc. No. 18.)

The Court held a hearing on the matter on September 21, 2009. Stephen Morris appeared on behalf of Plaintiff and James Speyer appeared on behalf of Defendant. The Court, for the reasons set forth below, grants in part and denies in part Defendant’s motion to dismiss.

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## **Background**

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2 Plaintiff's first amended complaint ("FAC") asserts a class action against McDonald's  
3 on behalf of himself and all other customers who received McDonald's gift cards and who  
4 have balances of less than \$10 and wish to redeem the cards for cash. (FAC ¶ 8.) Plaintiff  
5 alleges that within the past four years he received a \$5 McDonald's gift card as a gift and that  
6 he desired to redeem the card for cash instead of dining at a McDonald's restaurant. (Id. ¶ 6.)  
7 Plaintiff alleges that when he attempted to redeem his gift card for cash, he was told he could  
8 not receive cash for his gift card. (Id. ¶ 6.) Plaintiff alleges that McDonald's gift cards provide  
9 that, "[t]he value on this card may not be redeemed for cash . . . unless required by law." (Id.  
10 ¶ 5.) Based on McDonald's failure to redeem his gift card for cash, Plaintiff asserts two  
11 causes of action against McDonald's for violation of California Business & Professions Code  
12 § 17200 and unjust enrichment. (Id. ¶¶ 16-24; 25-28.)

13 Defendant McDonald's moves to dismiss Plaintiff's FAC under Federal R. Civ. Pro.  
14 12(b)(6) for failure to state a claim. (Doc. No. 16.)

## **Discussion**

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16 A motion to dismiss a complaint under Federal Rule of Civil Procedure 12(b)(6) tests  
17 the legal sufficiency of the claims asserted in the complaint. Navarro v. Black, 250 F.3d 729,  
18 731 (9th Cir. 2001). A complaint generally must satisfy only the minimal notice pleading  
19 requirements of Federal Rule of Civil Procedure 8(a)(2) to evade dismissal under a Rule  
20 12(b)(6) motion. Porter v. Jones, 319 F.3d 483, 494 (9th Cir. 2003). Rule 8(a)(2) requires that  
21 a pleading stating a claim for relief contain "a short and plain statement of the claim showing  
22 that the pleader is entitled to relief." The function of this pleading requirement is to "give the  
23 defendant fair notice of what the . . . claim is and the grounds upon which it rests." Conley v.  
24 Gibson, 355 U.S. 41, 47 (1957). "While a complaint attacked by a Rule 12(b)(6) motion to  
25 dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the  
26 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a  
27 formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v.  
28 Twombly, 550 U.S. 544, 555 (2007). A complaint does not "suffice if it tenders 'naked

1 assertion[s]’ devoid of ‘further factual enhancement.’” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949  
2 (2009) (quoting id. at 556). “Factual allegations must be enough to raise a right to relief above  
3 the speculative level.” Twombly, 550 U.S. at 555 (citing 5 C. Wright & A. Miller, Federal  
4 Practice and Procedure § 1216, pp. 235–36 (3d ed. 2004)). “All allegations of material fact  
5 are taken as true and construed in the light most favorable to plaintiff. However, conclusory  
6 allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for  
7 failure to state a claim.” Epstein v. Wash. Energy Co., 83 F.3d 1136, 1140 (9th Cir.1996); see  
8 also Twombly, 550 U.S. at 555-56.

### 9 **A. Unfair Competition Law**

10 Plaintiff’s first cause of action is for a violation of California’s Unfair Competition Law  
11 (“UCL”), Cal. Bus. & Prof. Code § 17200, et seq. (FAC ¶¶ 16-24.) The UCL prohibits “any  
12 unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200.  
13 Persons authorized to bring claims under the UCL are “those who have suffered injury in fact  
14 and lost money or property as a result of the unfair competition.” Id. § 17204. “[A] UCL  
15 action ‘borrows’ violations of other laws and treats these violations, when committed pursuant  
16 to business activity, as unlawful practices . . . .” Peterson v. Cellco Partnership, 164  
17 Cal.App.4th 1583, 1590 (2008) (quoting Farmers Ins. Exchange v. Superior Court, 2 Cal.4th  
18 377, 383 (1992)). “Under [Cal. Bus. & Prof. Code 17204], a private plaintiff may bring a  
19 UCL action even when ‘the conduct alleged to constitute unfair competition violates a statute  
20 for the direct enforcement of which there is no private right of action.’” Kasky v. Nike, Inc.,  
21 27 Cal.4th 939, 950 (2002) (citation omitted). Plaintiff alleges McDonald’s violated the Unfair  
22 Competition Law by failing to redeem its \$5 gift card for cash and in its use of deceptive or  
23 misleading language on the back of the gift cards concerning the right to redeem.

#### 24 **1. Failure to Redeem for Cash**

25 Plaintiff alleges that McDonald’s engaged in unfair competition by violating California  
26 Civil Code § 1749.5(b)(2). (FAC ¶¶ 7, 18.) Section 1749.5(b)(2) provides that, “any gift  
27 certificate with a cash value of less than ten dollars (\$10) is redeemable in cash for its cash  
28 value.” Plaintiff alleges that he attempted to redeem a McDonald’s \$5 gift card for cash, but

1 was told that he could not receive cash for his gift card. (FAC ¶ 6.) The Court concludes that  
2 Plaintiff states a claim for a violation of Cal. Bus. & Prof. Code §17200 et seq. based upon  
3 McDonald's alleged violation of Cal. Civ. Code §1749.5(b)(2). Plaintiff adequately alleges  
4 that he had a gift card with a balance under \$10, attempted to redeem the gift card for its cash  
5 value, and was denied a cash redemption.

6 Defendant argues that Plaintiff lacks standing to assert a UCL claim based upon a  
7 violation of §1749.5(b)(2) because he could still redeem his gift card for McDonald's products  
8 and therefore did not lose money or property as a result of the unlawful conduct. Under Cal.  
9 Bus. & Prof. Code § 17204, only a person who has (1) suffered injury in fact and (2) has lost  
10 money or property as a result of the unfair competition may bring a private action under the  
11 UCL. "A plaintiff suffers an injury in fact for purposes of standing under the UCL when he  
12 or she has: (1) expended money due to the defendant's acts of unfair competition [citations  
13 omitted]; (2) lost money or property [citations omitted]; or (3) been denied money to which  
14 he or she has a cognizable claim [citations omitted]." Hall v. Time Inc., 158 Cal.App.4th 847,  
15 854-55 (2008).

16 The Court previously dismissed Plaintiff's first cause of action for violation of  
17 California Business & Professions Code §17200 based upon an alleged violation of California  
18 Civil Code § 1749.5(b)(1) that he asserted in the original complaint. (Doc. No. 14.) Section  
19 1749.5(b)(1) provides that, "[a]ny gift certificate sold after January 1, 1997, is redeemable in  
20 cash for its cash value, or subject to replacement with a new gift certificate at no cost to the  
21 purchaser or holder." While the Court noted that §1749.5(b)(2) does entitle the gift card holder  
22 to a cash redemption, the Court dismissed Plaintiff's first cause of action alleging a violation  
23 of §1749.5(b)(1) because subsection (b)(1) does not entitle a gift card holder to redeem it for  
24 cash whenever presented, and as such Plaintiff failed to plead a violation of subsection (b)(1)  
25 and lacked standing under the UCL because he had not been denied money under subsection  
26 (b)(1) to which he had a cognizable claim. (Doc. No. 14 at 5-6.) Plaintiff did not allege in the  
27 original complaint a violation of subsection (b)(2) or that his gift card had a balance of less  
28 than \$10. (See Compl.)

1 The Court concludes that Plaintiff has sufficiently alleged standing to assert a UCL  
2 claim based upon the alleged violation of §1749.5(b)(2). Plaintiff adequately alleges that he  
3 has been denied money to which he has a cognizable claim, as he has a right under  
4 §1749.5(b)(2) to a cash redemption of his \$5 gift card and alleges that McDonald's denied him  
5 that right. Unlike in Hall, Plaintiff has alleged that he does not want McDonald's products  
6 and that McDonald's unlawful conduct has caused him to keep the gift card that can only be  
7 used for products he does not wish to consume. Hall, 158 Cal.App.4th at 855 (noting that Hall  
8 "did not allege he did not want to book, the book was unsatisfactory, or the book was worth  
9 less than what he paid for it" and that Hall "did not allege . . . Time's alleged acts of unfair  
10 competition induced him to keep a book he otherwise would have returned"). Defendant's  
11 argument that Plaintiff did not in fact lose any money or property is better suited for summary  
12 judgment. Accordingly, the Court denies McDonald's motion to dismiss Plaintiff's first cause  
13 of action for a violation of the UCL based upon a violation of §1749.5(b)(2).

## 14 **2. Deceptive and Misleading Language**

15 Plaintiff also alleges a violation of the UCL based upon deceptive and misleading  
16 language used on the back of McDonald's gift cards in violation of California's False  
17 Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500 et seq.<sup>1</sup> (FAC ¶¶ 21, 23.) Plaintiff  
18 alleges that the language, "[t]he value on this card may not be redeemed for cash . . . unless  
19 required by law" is deceptive and misleading because it leads the average consumer to believe  
20 that they cannot redeem their gift card for cash and fails to disclose the right to redeem cards  
21 with balances of less than ten dollars for cash. (Id. ¶¶ 5, 23.)

22 The FAL makes it unlawful for a business to disseminate any statement "which is  
23 untrue or misleading, and which is known, or which by the exercise of reasonable care should  
24 be known, to be untrue or misleading ...." Cal. Bus. & Prof. Code §17500. This provision has  
25 been "interpreted broadly to embrace not only advertising which is false, but also advertising  
26 which although true, is either actually misleading or which has a capacity, likelihood or

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28 <sup>1</sup>It is unclear from the FAC whether Plaintiff asserts a violation of the FAL or the UCL based upon the gift card language. However, the standard under either law for deceptive or misleading language is the same.

1 tendency to deceive or confuse the public.” Leoni v. State Bar, 39 Cal.3d 609, 626 (1985).  
2 Under the FAL and UCL, conduct is deceptive or misleading if it is likely to deceive an  
3 ordinary consumer. Williams v. Gerber Products Co., 552 F.3d 924, 938 (9th Cir. 2008). In  
4 order to assert a claim under the UCL or FAL, a person must have ““has suffered injury in fact  
5 and has lost money or property as a result of such unfair competition.” CAL. BUS. & PROF.  
6 CODE §§17204 & 17535. Therefore, reliance is required to have standing to sue under the  
7 UCL and FAL. See Cattie v. Wal-Mart Stores, Inc., 504 F.Supp.2d 939, 947–49 (S.D. Cal.  
8 2007) (holding reliance is required); Laster v. T-Mobile USA, Inc., 407 F.Supp.2d 1181, 1194  
9 (S.D.Cal. 2005) (same); Stickrath v. Globalstar, Inc., 527 F.Supp.2d 992, 996 (N.D.Cal., 2007)  
10 (same); c.f. Anunziato v. eMachines, Inc., 402 F.Supp.2d 1133, 1137 (C.D.Cal. 2005) (holding  
11 plaintiffs need not plead reliance).

12 The Court concludes that Plaintiff fails to state a claim for a violation of the UCL based  
13 upon the alleged deceptive and misleading language on the gift cards in violation of Cal. Bus.  
14 & Prof. Code § 17500. Plaintiff has not alleged that he relied on the language on the back of  
15 the gift card and as a result of that reliance lost money or property. Therefore, Plaintiff fails  
16 to plead his standing to assert a claim under the UCL or FAL based upon the gift card  
17 language. Accordingly, the Court grants McDonald’s motion to dismiss Plaintiff’s cause of  
18 action for a violation of the UCL based upon the alleged misleading and deceptive gift card  
19 language.

## 20 **B. Unjust Enrichment**

21 Plaintiff’s second cause of action is for unjust enrichment based upon McDonald’s  
22 alleged failure to redeem gift cards for cash when presented and the alleged deceptive or  
23 misleading gift card language. (FAC ¶¶ 25-28.) The elements of an unjust enrichment claim  
24 are the “receipt of a benefit and [the] unjust retention of the benefit at the expense of another.”  
25 Lectrodryer v. SeoulBank, 77 Cal.App.4th 723, 726 (2000).

26 The Court concludes that Plaintiff has sufficiently alleged a cause of action for unjust  
27 enrichment. Plaintiff alleges that McDonald’s is paid fully for gift cards at the initial point of  
28 sale and that McDonald’s is unjustly enriched by its unfair and unlawful practice of refusing

1 cash redemptions on unused card balances of less than \$10, resulting in additional funds on  
2 unused cards reverting to McDonald's. (FAC ¶¶ 26-27.) Because Plaintiff sufficiently alleges  
3 a violation of the UCL based upon McDonald's failure to comply with § 1749.5(b)(2), Plaintiff  
4 sufficiently alleges a cause of action for unjust enrichment. Accordingly, the Court denies  
5 McDonald's motion to dismiss Plaintiff's second cause of action.

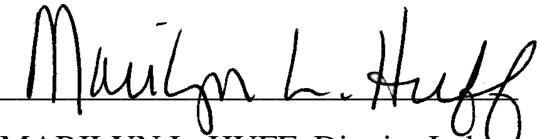
6 To the extent that Plaintiff alleges a cause of action for unjust enrichment based upon  
7 the alleged deceptive and misleading gift card language, the Court grants McDonald's motion  
8 to dismiss, as Plaintiff's UCL claim based upon this conduct fails.

9 **Conclusion**

10 For the reasons set forth above, the Court GRANTS IN PART and DENIES IN PART  
11 Defendant McDonald's motion to dismiss Plaintiff's first amended complaint. The Court  
12 dismisses Plaintiff's first and second causes of action to the extent they rely on Plaintiff's  
13 allegations of deceptive and misleading gift card language.

14 **IT IS SO ORDERED.**

15 DATED: September 21, 2009

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17 MARILYN L. HUFF, District Judge  
18 UNITED STATES DISTRICT COURT  
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